

FINAL REPORT: IIU concludes investigation into serious injury sustained during arrest by WPS officers

On August 11, 2020, the Winnipeg Police Service (WPS) notified the Independent Investigation Unit (IIU) of an incident that occurred on February 18, 2020, that concerned an allegation that the affected person (AP) sustained a serious injury during his arrest by police.

The notification, provided to IIU (edited for clarity), read in part:

“On February 18th, 2020, at approx. 10:30 p.m., [AP] was observed operating a stolen vehicle... in the area of McPhillips and Manitoba. This was observed by the complainant who was following in another vehicle. Police were contacted and multiple units including AIR1 followed the vehicle. [AP] attempted to evade police and collided with a Taxi in the area of McPhillips and Jarvis where he lost control and spun the vehicle. Multiple police vehicles then surrounded the vehicle and [AP] was arrested. He was removed from the stolen vehicle and handcuffed. He was transported to Health Science Centre (HSC) where he was treated and released suffering from a dislocated elbow and bruising. A medical release was provided by the HSC and [AP] was detained in custody.

On August 10, 2020, as a result of a letter received from Law Enforcement Review Agency (LERA), the Professional Standards Unit (PSU) contacted LERA and were advised that LERA had secured medical evidence that indicated [AP] suffered fractures to his right tibia and fibula which LERA indicates may have occurred during this incident”

An allegation of fractures to a tibia and fibula meets the definition of a serious injury pursuant to the Police Services Act (PSA) and regulations, this matter was a mandatory investigation for the IIU. IIU investigators were assigned to this investigation.

WPS file material and other information obtained by IIU investigators included:

- incident history report (CAD)
- Air 1 (WPS helicopter) video
- video footage from McPhillips Street Station Casino
- WPS radio transmissions
- AP arrest report
- notes and narrative reports of WPS officers
- HSC medical release for AP
- AP prisoner injury report
- use of force report
- GPS records for WPS vehicles
- medical reports of AP

Air 1 video, supplied by WPS, showed a transit bus stopped in the area of the arrest on February 18 and efforts were made to try and recover video footage from it. Unfortunately, Winnipeg Transit personnel informed IIU investigators that the video footage from that bus had overwritten with the passage of time and was no longer available.

Air 1 video footage (recorded in infrared format) captured the entire pursuit of AP's vehicle, including the termination at Jarvis Avenue and McPhillips Street, where he lost control, hit a snowbank and was surrounded by multiple police vehicles. Ten WPS officers approached the driver's side of the vehicle. However, because the video footage was recorded in infrared, specific actions of each officer could not be discerned. Efforts were made to enhance the footage, which assisted in determining the number of officers on scene, but in respect of fine details, such as actions of individuals, none could be made out.

Video cameras from McPhillips Street Station Casino captured police vehicles surrounding the AP's vehicle and WPS officers exiting their cruiser cars. However, the interaction between AP and police was obscured from view by the number of vehicles stopped in the area.

The civilian director designated two WPS officers as subject officers (S01-S02). 38 WPS officers were identified as potential witness officers. After a review of the agency information, it was determined that interviews with 36 witness officers (W01-W36) would be conducted. IIU investigators met with and interviewed AP.

Facts and Circumstances

Affected Person:

AP acknowledged operating a stolen vehicle near McPhillips Street Station Casino on February 18 and being pursued by WPS officers, when he lost control of the vehicle at the intersection of McPhillips Street and Jarvis Avenue, striking a snowbank. Two WPS vehicles boxed him in at that point, and AP stated that he raised his hands to surrender. AP stated that a WPS officer opened the driver's door, punching him in the face, then grabbed him and pulled him out of the vehicle, causing AP to land face down on the ground. AP stated that he was surrounded by other WPS officers who were yelling at him to show his hands. AP stated that a WPS officer was twisting and rotating his right arm behind his back despite him saying "*I'm not resisting.*" While this was going on, AP stated that five or six police officers were stomping and kicking his legs, with some saying, "*You want to run? We'll teach you to run.*" Two other WPS officers pulled his head up by the hair and punched him in the face. AP stated that he believed that that police may have been angry at him because they tried to stop him in his vehicle twice by deploying "*stop sticks*¹", which he drove around. He thought the officers believed he had tried to run them over when he evaded the tire deflation devices. AP estimated that he was kicked and punched for five minutes before police took his left arm and handcuffed it to his right. AP stated that he was unable to walk into the police station and was then transported to hospital, where he was treated for a dislocated right elbow. AP stated that he was not treated for any leg injury. AP stated that he was released from hospital and was transported to the Winnipeg Remand Centre, where his complaints about the pain in his leg were dismissed by the physician on site. AP stated that he was transferred to Brandon Correctional Institution where he was taken for x-rays and it was determined he had suffered a broken tibia and fibula in his right leg and a broken kneecap on

¹ A tire-deflation device used by law enforcement to safely and quickly end high-speed vehicle pursuits

his left leg. AP was unable to identify any of the WPS officers who used force on him, other than to say they were all males and that the ones who struck his legs were wearing toques or baseball caps. AP denied being under the influence of any intoxicants that night.

Medical Records:

A medical release was obtained from AP for information pertaining to his injuries allegedly suffered on February 18. AP was initially seen at HSC on February 19 and was x-rayed at the Brandon Clinic March 26.

According to the HSC records, AP was treated for a right elbow dislocation. There is no mention in the records of any injury to either of his legs.

According to the Brandon Clinic records, which consist only of x-ray reports, the following is referenced:

“Right tibia, ankle and calcaneus² x-rays:

Again there is an old healed fracture of the calcaneus that demonstrates mild/moderate deformity. There are also healed fractures of the proximal tibia and fibula. No acute fractures are identified.”

“Undisplaced transverse fracture line with a small cortical step is noted in the proximal shaft of the fibula with adjacent new bone formation suggestive of osseous healing recent fracture.”

“No fracture is noted in the bones forming the left knee and left tibia/fibula.”

Witness Officers:

WO1 was partnered with WO2 on February 18. WO1 stated that they were the second unit to arrive on scene and that he drove into the front of the vehicle operated by AP to stop it from moving. Two WPS officers from the first police vehicle on scene extracted AP and put him on the ground. WO1 stated that once AP was on the ground, he pulled his arms under his body. The two WPS officers who were engaged with AP pulled his arms out from under his body and handcuffed him. The struggle for control of AP’s arms lasted for about a minute. WO1 stated that he did not become involved in the struggle with AP, instead he stood by and watched from a distance of eight to ten feet away. WO1 stated that he did not see any strikes delivered to AP and could not recall if there were officers on AP’s legs. WO1 stated that he did not see any WPS officers stomp on AP’s legs. WO1 stated that WO2 did not have any direct or indirect contact with AP at the scene. WO1 stated that he and WO2 were involved in processing AP at the police station. WO1 stated that AP had an obvious injury to his right elbow, but could not remember AP limping.

WO2 was partnered with WO1. Their police vehicle was one of the first on scene, and drove into the front of the vehicle operated by AP. WO2 stated there were a lot of other WPS officers now present on scene. By the time she exited from her police vehicle, AP was already out of his vehicle. WO2 stated that she did not see any use of force directed at AP, she did not see any WPS officers stomping on his legs, and did not know how his leg came to be injured.

² The calcaneus is the bone that forms the heel of the foot. It is one of the tarsals, the bones that make up part of the foot and ankle. The calcaneus is the largest bone of the foot and provides the foundation for all of the other tarsals and metatarsals

WO3 was a police service dog handler on duty on February 18. WO3 stated that Air 1 was up in the air and police units were following a stolen vehicle being driven by AP until it was stopped on Jarvis Avenue just east of McPhillips Street, and was surrounded by police vehicles. WO3 stated that as he arrived on scene, he observed a "... *dog pile...*" of officers on the driver's side of AP's vehicle. WO3 stated that his view of AP was obstructed by the large group of police present. WO3 stated that he did not see any unnecessary or excessive use of force by any WPS officer on AP.

WO4 stated that he and his partner were assigned to assist in the incident but did not reach the scene by time it was contained.

WO5 was an acting supervisor on February 18 and arrived on scene after a number of other police vehicles were already present. WO5 stated that he saw a number of police officers in a group from a distance but could not see AP. WO5 stated that he did not see any use of force involving any of those officers. WO5 stated that he remained on scene for approximately five minutes and then departed.

WO6 was partnered with WO7 on February 18. WO6 stated that he drove their police vehicle into the front of AP's vehicle in an effort to stop it on Jarvis Avenue. WO6 stated that as he was going to exit the police cruiser and go to arrest AP, he was distracted by his partner who had fallen while exiting the vehicle. WO6 stated that by the time he got to AP's vehicle, he observed that a large number of WPS officers were dealing with AP. WO6 stated that could not see AP as his view was obstructed by all the police personnel surrounding him. WO6 is certain that he did not see any strikes or blows at that time.

WO7 was partnered with WO6 on February 18. WO7 stated that he was a passenger in police vehicle driven by WO6. WO7 stated that they were involved in the pursuit of a vehicle operated by AP. AP's vehicle lost control on Jarvis Avenue and spun out. It came to a stop against a snowbank on the north side of the street, at which point a number of police vehicles moved in to pin the vehicle there. WO6 drove their police vehicle into the front right side of the pickup to prevent it from moving any further, while another police vehicle pulled in front and to their right side. WO7 stated that as he climbed across the console of his vehicle and attempted to exit via the driver's door he fell to the ground. WO6 assisted him up and then they both approached the passenger side of AP's vehicle. AP had already been extricated by other WPS officers. WO7 stated that he could hear verbal commands being given such as "...*Stop resisting*" and "*Show us your hands*".

The names of WO8 and his partner WO9 appeared on the computerized call history for this incident. During their interviews, WO8 and WO9 confirmed that neither had this call for service as they were reassigned to another unrelated matter.

WO10 was partnered with WO11 on February 18. WO10 stated that by the time they arrived on scene, AP's vehicle was already surrounded by other WPS vehicles and that there were at least 10 WPS officers on foot, outside their own police cruiser cars. WO10 stated that although he did not see AP, he did not witness any use of force directed at AP. WO10 stated that he was on scene for approximately two minutes before departing.

WO11 was partnered with WO10 on February 18. WO11 stated that they became involved in the pursuit involving AP's vehicle as it made its way through the North End and Maples areas of

Winnipeg. WO11 stated that he heard a radio broadcast that AP's vehicle had been stopped by at the intersection of Jarvis Avenue and McPhillips Street. WO11 stated that once they arrived on scene, he observed AP on the ground and that a number of WPS officers were trying to get his hands behind his back to handcuff him. WO11 stated that he did not see any other WPS officers around AP's legs at the time and did not recall hearing any verbal commands given by any police officer involved in the arrest.

WO12 was partnered with WO13 on February 18. WO12 stated that they were driving south on McPhillips Street when the vehicle operated by AP was stopped by other police units. As they approached the scene, WO12 stated that they could see a large number of police cars with their emergency lights activated and continued to drive past the location. WO12 stated that he did not see AP, did not see how AP became injured and did not speak with other WPS officers about the arrest or use of force.

WO13 (who resigned from the WPS in March 2020) was partnered with WO12 on February 18. WO13 stated that they were aware of a call for service in respect to a stolen vehicle and drove past the scene of the arrest after seeing numerous other police vehicles at the corner of Jarvis Avenue and McPhillips Street. WO13 stated that he did not see AP and had no knowledge as to how he became injured.

WO14 was partnered with WO15 on February 18. WO14 stated that they were involved in the pursuit of AP's vehicle and had occasion to lay a "stop stick" at one of the exits of the parking lot at McPhillips Street Station Casino after Air 1 announced that the suspect vehicle was in that area. However, the vehicle departed the lot via another exit and was subsequently stopped by other units on Jarvis Avenue and McPhillips Street. WO14 stated that he and his partner walked over to the arrest location and observed a large number of police vehicles present. WO14 stated that he did not see AP.

WO15 was partnered with WO14 on February 18. WO15 stated that they arrived at the arrest scene after AP had been stopped and was in custody. WO15 stated that he did not see any use of force directed at AP.

WO16 was working as a street supervisor on February 18. WO16 stated he was assigned to the call as a supervisor at some point. WO16 stated that he was driving south on McPhillips Street and came to a stop near a grouping of police vehicles that had stopped near the suspect vehicle. WO16 stated that he did not see AP or see any use of force directed at AP.

WO17 was partnered with WO18 on February 18. WO17 stated that they became involved in the pursuit of the stolen vehicle, but were not on scene when AP was stopped at Jarvis Avenue and McPhillips Street. They drove past the location, noted a large police presence there, and continued driving. WO17 stated that he never saw AP.

WO18 was partnered with WO17 on February 18. WO18 stated that they drove past the arrest scene after hearing a radio broadcast that AP had been stopped by other units at Jarvis Avenue and McPhillips Street. WO18 stated that he observed a large police presence at the location, with a number of police vehicles and officers on foot visible. WO18 stated that he did not see AP.

WO19 was partnered with WO20 on February 18. WO19 stated that they were in an unmarked police vehicle when they arrived at the intersection of Jarvis Avenue and McPhillips Street. There were a number of other WPS officers on scene and were trying to extract the driver from the stopped vehicle. WO19 stated that he did not see any use of force directed towards AP.

WO20 was partnered with WO19 on February 18. WO20 stated that he and his partner, arrived on scene to see a number of police vehicles and officers already present. WO20 stated that four or five WPS officers were trying to take AP into custody. WO20 stated that these WPS officers were trying to grab AP's arms. WO20 stated that he heard WPS officers saying "*Winnipeg Police*", "*Stop resisting*". WO20 stated that while he does not recall seeing any blows or strikes being delivered to AP it was possible. WO20 stated that he did not know how AP's leg came to be broken.

WO21 was partnered with WO22 on February 18. WO21 stated that they arrived on scene after AP had been removed from the vehicle and was laying on the ground. WO21 stated that there was between six to eight WPS officers surrounding AP but none were around his legs. WO21 stated that he heard commands given to give up his arms and that he was under arrest. He did not see any blows or strikes being delivered to AP. WO21 stated that AP's left arm was brought up by someone and there was a request for handcuffs to be applied. WO21 stated that he applied his handcuffs to AP's wrist then the arm was twisted back behind his back. There was only one unknown WPS officer holding AP's left arm.

WO22 was partnered with WO21 on February 18. WO21 was the driver of their police vehicle. They became involved in the pursuit of the stolen vehicle operated by AP and had contact with that vehicle in the parking lot of McPhillips Street Station Casino, where they unsuccessfully attempted to block it. AP was stopped and apprehended by other officers at the intersection of Jarvis Avenue and McPhillips Street. WO22 stated that they drove to the stop scene and noted that AP was out of the vehicle and laying on the ground, surrounded by "*about ten officers*". WO22 stated that WO21 assisted in handcuffing AP, while he went and held AP's left leg. WO22 stated that he did not see anyone deliver strikes or kicks to AP's legs.

WO23 was partnered with WO24 on February 18. WO23 stated that they were assigned to assist with the pursuit of a stolen vehicle. WO23 stated that they unsuccessfully attempted to deploy a "stop stick". WO23 stated that they became aware that the suspect vehicle was stopped a short distance away. They drove to the stop scene and noted that AP was in custody. They assisted with traffic control in the area.

WO24 was partnered with WO23 on February 18. WO24 stated that they were assigned to assist in the pursuit of a stolen vehicle and attempted unsuccessfully to deploy a "stop stick". WO24 stated that they made their way within a half a block from where AP was stopped but had not contact with or saw AP.

WO25 was a patrol sergeant on duty on February 18. He was alone in a police vehicle when he arrived at the intersection of Jarvis Avenue and McPhillips Street. There was a large number of police vehicles already on scene. WO25 stated that he did not see AP nor any use of force directed at him.

WO26 was partnered with WO27 on February 18. WO26 stated they were assigned to the pursuit call but never made it to the final arrest scene at the intersection of Jarvis Avenue and McPhillips Street. WO26 stated that she did not have any contact with AP.

WO27 was partnered with WO26 on February 18. WO27 stated that they were assigned to the pursuit of a stolen vehicle and recalled arriving at the intersection of Jarvis Avenue and McPhillips Street. WO27 stated that there were numerous police vehicles on scene and had the situation handled so they carried on and drove off.

WO28 was partnered with SO1 on February 18. Upon arrival at the arrest scene, WO28 stated that she did not see how AP was removed from his vehicle but did observe a number of WPS officers surrounding him on the ground. WO28 stated that one of those WPS officers was SO1, who was assisting in handcuffing AP. WO28 stated that the WPS officers present were attempting to control AP's upper and lower body by grabbing his arms. WO28 did not see any strikes or blows delivered to AP nor did she see any WPS officers stomping on his legs. WO28 stated that she and SO1 escorted AP to the District Two station, where his dislocated right elbow was noted and he was taken to hospital for treatment. WO28 stated that AP was limping at the police station.

WO29 was on duty on February 18. WO29 stated that she was assigned to the incident and attempted to get to the area to assist in the containment of the suspect vehicle. WO29 stated that she was later made aware that the vehicle was successfully stopped but had no personal role in that. WO29 stated that she drove past the scene and left to take other calls.

WO30 was a police service dog handler on duty on February 18. WO30 stated that he arrived at the arrest scene shortly after 11:00 p.m. WO30 stated that he got his dog out of the police vehicle and took a position away from a group of WPS officers next to AP's vehicle. WO30 stated that within four minutes, he put his dog back into his police vehicle and departed the scene. WO30 stated that he did not see any WPS officers use force against AP and did not know how AP's elbow or legs were injured.

WO31 was partnered with WO32 on February 18. WO31 stated that they arrived at the arrest scene later than other units. WO31 did not see any use of force on AP.

WO32 was partnered with WO31 on February 18. WO32 stated they were late arriving at the arrest scene and on arrival, AP was already in custody. WO32 did not see any use of force on or directed at AP.

WO33 was working alone on February 18. WO33 stated that he arrived at the intersection of Jarvis Avenue and McPhillips Street and had placed his police supervisor vehicle nose to nose with the suspect vehicle. WO33 stated that he did not see how AP was removed from the vehicle. WO33 stated that he did not see any use of force on or directed at AP.

WO34 was on duty as an acting supervisor on February 18. He was working alone on that evening. WO34 stated that he arrived late to the intersection of Jarvis Avenue and McPhillips Street, and saw a number of police vehicles had already contained the stolen vehicle. WO34 stated that he positioned his vehicle in the intersection to direct civilian vehicles.

WO35 was on duty as a road supervisor on February 18. He was working alone on that evening. WO35 stated that when he arrived at intersection of Jarvis Avenue and McPhillips Street AP was already in custody. WO35 stated that he did not see any use of force on or directed at AP.

WO36 was partnered with SO2 on February 18. WO36 stated that they were involved in the effort to stop AP. At the intersection of Jarvis Avenue and McPhillips Street, WO36 stated he put his police vehicle in front of the stolen vehicle in an effort to halt its progress. However, AP drove his vehicle into the cruiser car and did not stop until he was blocked by another police vehicle. WO36 stated that he and SO2 exited their vehicle and approached the driver's side of the stolen vehicle. WO36 stated that he had his sidearm drawn. WO36 stated that SO2 pulled AP from the vehicle and put him on to the ground. AP then pulled his arms under his body. WO36 stated that multiple WPS officers were now present and yelling at AP to stop resisting. WO36 stated that SO1 pulled AP's right arm out and was handcuffing him. WO36 stated that he applied a shin pin to the AP's upper back. WO36 stated that he was not aware if any other WPS officer had contact with AP.

Subject Officers

Pursuant to the provisions of the PSA, a subject officer cannot be compelled to provide his or her notes regarding an incident, nor participate in any interview with IIU investigators. In this case, SO1 did provide his notes and participated in an interview with IIU investigators. SO2 provided his notes, a copy of his use of force report and a prepared statement to IIU investigators but declined to participate in any interview.

SO1 stated he was partnered with WO28 on February 18. SO1 stated they were the third police vehicle to approach the vehicle driven by AP after it had spun out near the intersection of Jarvis Avenue and McPhillips Street. SO1 stated that he ran to this vehicle as SO2 was removing AP from the driver's seat. SO2 pulled AP out and put him on the ground, telling him to stop resisting and get on the ground. SO1 stated that he did not see SO2 strike AP. SO1 stated that he straddled AP's lower back/buttocks area and managed to grab his right arm and force it behind his back. SO1 stated that he did not feel any dislocation take place, but acknowledged that he was the only WPS officer to handle AP's right arm. SO2 gained partial control of the AP's left arm, but could not get it behind his back. Instead, SO2 twisted it over his left shoulder where he believes WO22 applied handcuffs to both wrists. During the struggle, SO1 stated that WO36 was pinning AP's shoulder or upper body. SO1 stated that he placed AP into his police vehicle. SO1 stated that AP began to kick at the rear driver's side window. AP was subsequently transported to the West District (District Two) Station where he was not observed to limp when he entered the prisoner viewing area. When it became apparent that AP had a dislocated right elbow, he was transported to hospital for treatment. SO1 stated that AP did not say anything to medical personnel about any injuries to his right leg during his treatment. When leaving the hospital, SO1 stated that AP began to limp, and told police that it was caused by an old hip injury.

SO2's reports contained the following notations regarding the altercation with AP:

"[WO36] exited the driver side of our cruiser car and drew his service pistol to the low ready position and yelled for AP to turn the vehicle off however he refused to comply as he had his foot on the gas causing the tires to spin on the roadway. The writer approached and yelled for AP to turn off the [vehicle] as he was under arrest. The writer yelled this as I opened the front driver side door of the vehicle. The writer observed AP

reaching for something on his lap. The writer, fearing that AP was attempting to access a weapon, punched AP one time in the face with a closed fist. The writer then took hold of AP's jacket with both hands and pulled him from the vehicle. AP was not wearing a seatbelt at the time.

As the writer pulled AP from the vehicle, I noticed an object which was later identified as a knife falling out of his lap. The writer continued to pull AP from the vehicle and onto the ground, resulting in him hitting his head on the pavement. The writer yelled for AP (who was laying on his stomach) to put his hands behind his back, however he refused.

[SO1] then attended to assist and took hold of AP's right arm which was tucked underneath his body. [SO1] also told AP he was under arrest and to put his hands behind his back. AP refused to comply with the verbal direction as he kept both arms under his body and was also attempting to get on his knees.

[SO1] then mounted AP with both legs straddling his lower back while maintaining control of his right arm which at this time came free from under his body. The writer had a hold of AP's left arm and was demanding he put his left arm behind his back. AP refused to give up his left arm and continued to struggle in an attempt to get free from officers. The writer punched AP once in the left hip area and again yelled for him to give up his left arm.

[WO36] assisting in subduing AP by lightly shin pinning him on the right shoulder area and holding his head still to prevent him from attempting to get up. The writer was then able to pull AP's arm from beneath his body and secure it behind his back.

[WO22] attended and assisted [SO1] in securing AP in handcuffs behind his back.

The writer with the assistance of [SO1] assisted AP to his feet.

It should be noted that several officers that the writer was unable to identify were present in assisting with taking AP in to custody."

Conclusion

This investigation must consider whether the actions of any or all of the subject officers involved with AP caused, or in any way contributed, through action or inaction, to his injuries, and if so, should criminal code consequences flow therefrom.

The following facts and circumstances have been established:

- All WPS officers that were involved in this matter were at all material times on-duty, lawfully placed and in lawful execution of their duties;
- AP was operating a reported stolen vehicle and was involved in a police pursuit through areas of the north part of Winnipeg. AP refused to stop his vehicle and the pursuit concluded when he lost control of his vehicle and it ran into a snow bank near the intersection of Jarvis Avenue and McPhillips Street;
- AP was forcefully removed from the stolen vehicle. A knife was seen falling from his lap as he was pulled from the stolen vehicle;

- When AP was on the ground, he pulled his arms under his body and refused all commands to stop resisting. I am satisfied that in these circumstances, AP posed a real risk to safety of police officers;
- AP continued to actively resist police during attempts to secure his arms and handcuff him. I am satisfied that the injury to his elbow is consistent with the active resistance and attempts to handcuff. This is not a situation of excessive or unnecessary force by police in these circumstances;
- There is a dearth, if not complete absence, of any evidence, of any force applied to the legs of AP sufficient to cause the referenced fractures to his fibula, tibia and knee cap;
- On his examination at HSC shortly after the incident, there is no reference to any complaint to any injury to AP's legs;
- AP's leg injury as alleged are not consistent with any known use of force, such as stomping, by any WPS officer at the time. There is no evidence (witness statements or video) that would support this allegation.

Based on the various witness accounts and other information obtained in this investigation, I am not satisfied that there is any evidence available that would give rise to a finding that reasonable grounds exist to support criminal charges against any or all of the subject officers.

The IIU investigation is complete and this file is closed.

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
January 24, 2022

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